

EXECUTIVE OFFICERS SUMMARY REPORT
9:00 a.m., January 23, 2003
Regional Water Board Hearing Room
5550 Skylane Boulevard, Suite A
Santa Rosa, California

ITEM: 3A

SUBJECT: Consideration of Pacific Lumber Company's Request to Waive Waste Discharge Requirements for Selected Plans in Freshwater Creek

DISCUSSION

On December 5, 2002, the North Coast Regional Water Quality Control Board (Regional Water Board) passed a motion to direct the Executive Officer to implement a schedule of actions within the five watersheds: Elk River, Freshwater, Bear, Stitz, and Jordan Creeks. One of these actions was to request a report of waste discharge (ROWD) for timber harvest activities conducted by Pacific Lumber in the Freshwater Creek watershed.

On December 19, 2002, the Executive Officer issued an order (Attachment 1) requesting a ROWD for timber harvest activities in Freshwater Creek. That letter also revoked all prior waivers of waste discharge requirements, except for several specific timber harvest plans or plan units. The request for a report of waste discharge does not preclude any activities that do not result in the discharge of waste, and only applies to land holdings in Freshwater Creek.

The Company expressed concerns with the request for a ROWD at the December 5, 2002, Regional Water Board meeting and during subsequent letters and conversations. One major concern was with the proposed December 13, 2002, schedule for requesting a ROWD, as the Company reported that operational needs require work in this watershed during January and February 2003, before the proposed adoption of waste discharge requirements.

California Water Code (CWC) section 13260 provides for filings of ROWDs and appropriate fees. Waste discharge requirements (WDRs) are drafted to address the waste discharges described in the ROWD. These WDRs must be adopted by the Regional Water Board at a public meeting¹, and CWC section 13264 requires that no discharge can occur until WDRs are issued by the Regional Water Board. Timber harvesting activities conducted in the winter generally pose a threat of discharge, and it would be reasonable to interpret the provisions of CWC 13264 as limiting such harvest activities. Therefore, timber harvest plans that Pacific Lumber Company wished to harvest in the Freshwater Creek watershed during January and February (the Board meeting is scheduled for February 27) would be affected once the ROWD request was issued, and the threat of discharge could be such that the Company feels precluded from any operations.

¹ The Regional Water Board may, however, adopt general waste discharge requirements to address similar discharges. Once general waste discharge requirements are adopted, the Regional Water Board Executive Officer may determine that proposed projects are eligible for, and may be enrolled under, the general waste discharge requirements, and no further Regional Water Board hearing is needed.

Pacific Lumber Company indicated to the Executive Officer that the following seven plans were necessary for their uninterrupted operational needs:

- THP-1-01-200 HUM (116 acres, operations commenced in 2002)
- THP-1-01-325 HUM (104 acres, operations commenced in 2002)
- THP-1-01-378 HUM (87 Acres, operations commenced in 2002)
- THP-1-01-411 HUM (107 acres, no operations as yet)
- THP-1-01-428 HUM (182.2 acres, operations commenced in 2002)
- THP-1-01-451 HUM (184 acres, operations commenced in 2002)
- THP-1-01-453 HUM (118 acres, no operations as yet)

Pacific Lumber Company observed that the Regional Water Board had waived some of these plans (THPs 325, 378, and 453) in its actions on December 10, 2002, when waiving currently active timber harvest plans. However, once the Executive Officer issued a request for a report of waste discharge, these waivers would also be revoked.

In order to adequately review the matter, the Executive Officer extended the previously planned date for requesting a ROWD to December 19th, at which time all waivers of timber harvest plans in Freshwater Creek were revoked, except for the following:

- a. THP 1-01-325 HUM (Morton's Loop) as waived on December 10th by Order No. R1-2002-0111
- b. THP 1-01-378 HUM (Horseshoe) as waived on December 10th by Order No. R1-2002-0111
- c. THP 1-01-428 HUM (On the Road) provided that, in submitting the report of waste discharge called for on December 19, 2002, that Pacific Lumber Company apply for and fulfill the waiver requirements contained in Order No. R1-2002-0109, and the Executive Officer reviews such application and concludes that a waiver of waste discharge requirements for this plan is appropriate.²
- d. Portions of THP-1-01-411 HUM (George Cloney) for plan units one (1) and two (2), provided that, in submitting the report of waste discharge called for on December 19, 2002, that Pacific Lumber Company apply for and fulfill the waiver requirements contained in Order No. R1-2002-0109, and the Executive Officer reviews such application and concludes that a waiver of waste discharge requirements for this plan is appropriate.³

The Executive Officer was aware that continued operations during the January and February period is important to the Company because of limitations under the Habitat Conservation Plan for such species as the Marbled Murrelet (seasonal restrictions run from March 24 through September 15) and the Northern Spotted Owl (seasonal restrictions run from March 1 through August 31). However, it appeared that these restrictions do not affect all plan areas, and some activities could occur during these periods on some of these plans. An additional limitation for

² No applications for waivers under Order No. R1-2002-0109 have yet been received on THP 428, therefore no activities resulting in a discharge can be conducted on this plans yet.

³ No applications for waivers under Order No. R1-2002-0109 have yet been received on THP 411, therefore no activities resulting in a discharge can be conducted on this plans yet.

the Company includes the 500-acre annual limitation established by the California Department of Forestry and Fire Protection for harvesting in this watershed in clearcut equivalent acreage.

The activities proposed for the seven plans were described by the Company as falling of timber, yarding, and hauling, or essentially all harvesting activities. All plans but THP 453 include proposed tractor and/or cable yarding systems. Plan 453 is proposed for helicopter yarding. Many plans include landing and/or road construction (THP 200, 325, 378, 428, 451, and 453) or re-construction as a necessary component of timber yarding and hauling, and such construction or re-construction activities during the winter would be difficult to accomplish without the discharge of waste to a sediment-impaired stream.

The Water Quality Control Plan for the North Coast Region (Basin Plan) includes an *Action Plan for Logging, Construction and Associated Activities* (Action Plan). This Action Plan contains a directive that the Regional Water Board staff "shall require the submission of Reports of Waste Discharge" when investigations indicate that the beneficial uses⁴ of water may be adversely affected by waste discharges." After evaluating the extensive evidence submitted for hearings on this matter, and reviewing staff investigations of waste discharges in the Freshwater Creek area, the Executive Officer concluded that:

1. Discharges of earthen materials to Freshwater Creek and its tributaries have resulted from logging, road construction, and related activities;
2. Ongoing discharges from historic logging, road construction, and related activities continue to occur with rain events, and from wintertime operations during logging, road construction, and related activities;
3. Beneficial uses of Freshwater Creek and its tributaries have been adversely affected by these discharges of earthen materials; and
4. Wintertime logging, road use, and related activities threaten to continue to adversely affect the beneficial uses of Freshwater Creek and its tributaries.

Each of the seven plans was carefully reviewed. One consideration was that the Company had commenced work during calendar year 2002 on portions of some of these plans, therefore the entire acreage would not be subject to harvesting during the January/February period in those areas which had already been harvested. Other considerations included the plan location, the silvicultural method, the yarding method, and road/landing construction and reconstruction.

The seven plans are shown on Figure 1, and are further described below:

THP-1-01-200 HUM (116 acres, operations commenced in 2002)

Two of the five units on this plan were already harvested. The five units varied from ridgetop to streamside along the South Fork of Freshwater Creek. Several land instabilities were present on this plan, and staff had non-concurred on the plan during the review team process. The Executive Officer concluded that waiver of waste discharge requirements for this plan would not be in the public interest.

⁴

Attachment A contains the list of beneficial uses of Freshwater Creek.

THP-1-01-325 HUM (104 acres, operations commenced in 2002)

This plan had already been harvested to a large degree, and the remaining unharvested portion of the plan appeared to be a ridge saddle. The Executive Officer determined that revocation of the waiver granted on December 10th was not necessary.

THP-1-01-378 HUM (87 Acres, operations commenced in 2002)

Two of the three units were already harvested, and the remaining unharvested area had considerable setback from the South Fork Freshwater Creek. The Executive Officer determined that revocation of the waiver granted on December 10th was not necessary.

THP-1-01-411 HUM (107 acres, no operations as yet)

Four units exist on this plan, and the Executive Officer determined that the Company could apply for a waiver of waste discharge requirements for units 1 and 2 under the terms of Order No. R1-2002-0109, as these units appeared to pose a lesser risk of discharge than the remaining units.

THP-1-01-428 HUM (182.2 acres, operations commenced in 2002)

Six units exist on this plan, with three of the units already harvested. This plan is immediately adjacent to the paved, Freshwater-Kneeland Road, where hauling would occur. The Executive Officer determined that the Company could apply for a waiver of waste discharge requirements under the terms of Order No. R1-2002-0109.

THP-1-01-451 HUM (184 acres, operations commenced in 2002)

This plan includes four units, some of which have already been harvested. The units are large, and several landslide instabilities are present. The Executive Officer concluded that waiver of waste discharge requirements for this plan would not be in the public interest.

THP-1-01-453 HUM (118 acres, no operations as yet)

This plan has three units and is proposed for helicopter yarding. All units include areas adjacent to streams. The road and landing areas would need to be re-constructed. The plan called for over 1400 feet of new road construction. The Executive Officer concluded that waiver of waste discharge requirements for this plan would not be in the public interest.

While the evidence in the files at this time could reasonably support a requirement for reports of waste discharge⁵ on all proposed and current operations in this watershed, the request for a report of waste discharge was limited to winter operations. Further, the Executive Officer weighed the threat of discharge as well as the Company's operational needs in determining whether any waivers were appropriate. The decision to waive waste discharge requirements for plans or portions of plans was not made lightly due to the severely sediment-impaired watershed. Logging, construction and related activities conducted during the rainy season create, in staff's

⁵ This requirement to file a report of waste discharge does not extend to emergency abatement activities, habitat restoration work, administrative access for monitoring and similar activities, or activities required or directed by federal or state agencies to mitigate environmental impacts from past operations.

professional judgment, a high level of threat of controllable discharges that would further impair water quality in Freshwater Creek. In addition, with the issuance of the report by the Independent Science Panel, further scrutiny of all plans in this watershed appears necessary.

Preliminary

Staff Recommendation: The Executive Officer recommends that the Regional Water Board take no action to waive waste discharge requirements for any additional plans in the Freshwater Creek watershed.